**IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH**

S.B. CIVIL WRIT PETITION NO.1289/07

Dinesh Prakash Sharma **Versus** State & Ors.

DATE OF ORDER :: 06/04/2007

HON'BLE MR. JUSTICE AJAY RASTOGI

Mr. Karanpal Singh, for petitioner

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Instant petition has been filed by petitioner assailing the order Ann.2 dated 16th August, 2000 whereby he was removed from service after holding a regular departmental inquiry under the Rules, 1958, but the Appellate Authority while holding him guilty, interfered with the punishment and in place of dismissal, passed order of compulsory retirement as a measure of penalty vide order Ann.4 dated 11th June, 2001.

This petition has been filed after almost 6 years of passing of order impugned by the Appellate Authority.

Counsel submits that because of family circumstances, particularly, one of his daughter also died and he was not in normal mental state of affairs, thus could not approach this court in assailing the order in time by which he was aggrieved. Apart from delay in filing the instant petition, the charge levelled against petitioner

was about wilful absence from duty and on three different occasions, he remained absent without seeking prior permission and it was for sufficient long time.

The authority was not satisfied with the explanation which he has furnished and after holding him guilty, he was dismissed from service and in the appeal preferred by him, the Appellate Authority converted the punishment from dismissal to compulsory retirement.

Counsel for petitioner on merits submits that earlier he was compulsorily retired under Rule 244(2) of Rajasthan Service Rules, which was set aside by the learned Tribunal vide order dated 3rd February, 1997, thereafter, fresh proceeding by initiating departmental inquiry was initiated against him. This action of the respondents in passing order of his compulsory retirement is barred by res judicata and not legally sustainable.

As observed by me above, the inordinate delay has not been explained by counsel and there is nothing on record what has been submitted by him and the writ deserves to be dismissed on the ground of laches only.

Apart from it even on merits the submission is not legally sustainable for the reason that earlier the order was passed under Rule 244(2)

of RSR and later on departmental inquiry for misconduct which he has committed while on duty has been initiated against him and in a regular departmental inquiry he was ultimately held guilty for his long wilful absence from duty - on account of which he was finally dismissed from service, but the Appellate Authority converted the penalty while holding him guilty from dismissal to compulsory retirement. Principle of res judicata has no application. Even looking to the charge levelled against him there was a long wilful absence and the finding which has been recorded by the Disciplinary Authority and so also by the Appellate Authority is duly supported by material on record and even otherwise also does not call for any interference.

Consequently, I find no merit in the instant petition, the same stands dismissed.

Counsel further submits that when he was under suspension, subsistence allowance was not paid to him. If that be so, he will be free to make representation before the concerned authority.

[AJAY RASTOGI],J.

FRBOHRA,JR.P.A.